IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2334 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2334 of 1999

MR NK MAJMUDAR for Petitioner No. 1

MR KL PANDYA ASSTT GOVERNMENT PLEADER for Respondent No. 1

MS KN VALIKARIMWALA for Respondent No. 2-5

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 18/09/2003

ORAL JUDGEMENT

#. Heard learned advocate Mr.N.K.Majmudar on behalf of the petitioner and learned AGP Mr.K.L.Pandya for

respondent - State Authority.

#. The brief facts giving rise to the present petition are as under :

The petitioner was appointed as T.T.C. Operator on 1st June, 1968 and the petitioner has been superannuated on 31st October, 1998. According to the petitioner, in the year 1980, the petitioner was posted in Madhuvan Colony under Daman Ganga Project. That there is colony for Irrigation and P & W Department employees at the place known as Madhuvan. According to the petitioner, at that time, the petitioner was allotted bigger quarter being No.3/A/112 in the year 1985. Thereafter, the petitioner was transferred from aforesaid place to Jamnagar District at Sani Dam. However, since the children of the petitioner were studying at Madhuvan and the petitioner was not allotted a quarter at Jamnagar, the petitioner had remained continued in occupation of the quarter in question at Madhuvan Colony. Thereafter, the petitioner was transferred from Jamnagar District to Baroda District in the year 1989. Thereafter in Baroda also, no quarter was allotted to the petitioner and children of the petitioner were studying, the petitioner had continued occupation of the quarter at Madhuvan Colony. Thereafter, a letter dated 17th March, 1994 came to be issued by the Deputy Executive Engineer, Baroda Office wherein it was mentioned that after transfer of the petitioner, the petitioner has not vacated the quarter and therefore, it was asked to the petitioner to pay the rent at the rate of Rs.139/- per month for 96 months which came to Rs.14,639/-. In response to the said letter, request was made by the petitioner to deduct a sum of Rs.500/- per month from the salary of the petitioner and same was deducted by the respondent. Thereafter, the petitioner had paid rent of Rs.139/- per month upto February, 1997. The respondent, thereafter, had fixed the rent at the market rate of the said Madhuvan quarter in question vide letter dated 18th November, 1996 at the rate of Rs.1920/- with effect from 1991 with retrospective effect and for 60 months it was asked to the petitioner to pay a sum of Rs.1,16,490/consisting of Rs.1,15,200/- towards the rent for 60 months and other charges. On 15th October, 1998 the petitioner was served with a notice by the Executive Engineer, Daman Ganga Project Office in which it was mentioned that he is the competent authority under the Gujarat Public Premises [Eviction of Unauthorised Occupancy] Act, and in that capacity, he has issued the said notice regarding the quarter in question. Thus, the petitioner was, by way of the said notice, asked to pay

the rent at the rate of Rs.1920/- per month and accordingly to pay a sum of Rs.1,80,621/- at the rate of Rs.1920/- with effect from 1st January, 1991 and the amount was found to be due upto May, 1998. That said notice was replied by the petitioner on 20th November, 1998 and meanwhile, the petitioner has been retired from service on 31st October, 1998 and he has handed over the possession of the quarter in question on 31.12.1998. It is case of the petitioner that after retirement of the petitioner, no due certificate has not been issued in favour of the petitioner by the Department because arrears of the amount of market rent has not been paid by the petitioner. Therefore, part of the benefits of pension and gratuity has been withheld by the Department but out of the said amount, the respondent has paid a sum of Rs.1,16,300/- to the petitioner on 5th February, 2001 while deducting Rs.1,86,909/- from the amount of gratuity and pension which was available to the petitioner.

#. Learned advocate Mr.N.K.Majmudar appearing on behalf of the petitioner has submitted that now except the withheld amount of Rs.1,86,990/- which includes the amount of gratuity to the tune of Rs.1,32,712/- and the part of pension amount out of total amount of Rs.1,17,497/-. Learned advocate Mr.Majmudar also pointed out that because of non issuance of "No Due Certificate" in time, the amount of pension has been paid to the petitioner after a period of eleven months with effect from 4th October, 1999. Therefore, now the question is, whether the respondent is entitled to withhold the amount of gratuity and pension of the petitioner on account of occupying unauthorisedly the quarter in question or not ? The Deputy Executive Engineer, Irrigation Department, Baroda has wrote a letter to the petitioner dated 21st January, 1999 demanding an amount of Rs.1,95,522/- from the petitioner due upto 30th December, 1998 and after paying the said amount, the respondent will issue no due certificate, then only the petitioner will get the amount of pension and gratuity.

#. On behalf of the respondent, Mr.V.C.Gandhi, Deputy Executive Engineer, Damanganga Building Sub Division has filed affidavit-in-reply, wherein almost same facts are narrated about initial rent of Rs.139/per month and then, it was increased to Rs.1920/- with retrospective effect from 1st January, 1991. The facts are not much in dispute and in the present petition, this Court is not examining the issue whether the market rent which has been fixed by the respondent is correct or not; and, whether it was in accordance with law and Rules or not. But at this stage, this Court is only considering the

question that in light of this fact, whether the respondent are entitled to withhold amount of gratuity and pension when the petitioner had occupied unauthorisedly the quarter in question. However, the respondent in para-16 of their affidavit-in-reply to the answer of para-13 of the petition, it is stated that the petitioner has to pay Rs.1,86,909/- as arrears of the rent of the quarter which had not vacated in time and the said amount is due from the petitioner, after debiting the above amount to the Government only a "No Due" certificate can be issued by the Project Authorities. However, the respondent has relied upon Government Resolution dated 12th May, 1995 and 22nd October, 1982. The respondent has also produced the details about the rent recovered from the petitioner and what amount now due against the petitioner to be recovered by the Department. The details showing the details are given in Annexure-III to the reply produced by the respondent.

#. Learned AGP Mr.K.L.Pandya for the respondent State Authority has submitted that one letter dated 19th August, 2003 was issued by the Executive Engineer addressed to the petitioner, wherein demand has been made by the Executive Engineer from the petitioner that he shall pay a sum of Rs.1,86,909/- and after amount has been paid by the petitioner, the respondents Department will pay the remaining amount of gratuity and the pension to the petitioner.

Learned AGP Mr.Pandya has also submitted that the quarter which has been given to the petitioner being a condition of the service and according to the service rules, as and when the petitioner was transferred from the place viz. Madhuvan Colony to Jamnagar District, then the petitioner shall have to vacate the quarter immediately and he cannot occupy the quarter in question unauthorisedly when transfer order was implemented against the petitioner. Therefore, in case of unauthorised occupation by the petitioner of the said quarter in question, the respondent department is entitled to recover the market rent from the petitioner on the basis of the Government Resolutions and Circulars. Therefore, the respondent Department has rightly recovered the amount of market rent in respect of the quarter in question from the due amount of the petitioner of gratuity and pension, for that, there is nothing wrong because the respondent department is entitled to recover the amount of market rent from the petitioner with effect from 1st January, 1991. Learned AGP Mr.Pandya has also drawn the attention of this Court to the details in Annexure-III, wherein it is shown that for what period,

rent has been recovered by the respondent from the petitioner. According to this statement, Rs.75/- per month was recovered as rent of the quarter in question from the petitioner for the period from February, 1985 to March, 1985, thereafter from April, 1985 to December, 1990 for 69 months, rent of Rs.139/- per month was recovered from the petitioner. Thereafter, from January, 91 to May, 1998 for a period of 89 months, rent at the rate of Rs.1920/- was asked from the petitioner which come to Rs.1,70,880/- and thereafter from June, 1998 to December, 1998 on the date on which possession of the quarter in question was handed over to the respondent and for said seven months, market rent of Rs.3,840/- per month was asked to be paid by the petitioner according to the respondent as per the Government Resolution dated 9.6.1998. Thus, total sum of Rs.2,26,880/- has been demanded from the petitioner by the respondent towards the rent of the quarter in question. It is, therefore, case of the respondent that total amount of Rs.2,07,501/is due to be recovered towards the rent of the quarter from the petitioner. However, since the petitioner has paid a sum of Rs.20,592/- to the Department and after adjustment of due amount of the petitioner of the gratuity and pension, now the respondent is entitled to recover a sum of Rs.1,86,909/from the petitioner. This being the amount of rent which requires to be recovered from the petitioner by the respondent, that has resulted into withholding of the amount of gratuity and part amount of pension of the petitioner. Therefore, according to the learned AGP Mr.Pandya, the respondents are entitled to withhold the gratuity and also entitled to adjust the amount of rent from the amount of gratuity and pension. Therefore, there is no illegality committed by the respondent while adjusting the amount from the gratuity and pension. Therefore, according to him, there is no substance in the present petition and the same requires to be dismissed accordingly.

#. I have considered submissions made by the learned advocates for the parties. Considering the facts and the question raised before this Court that whether in a given case, the respondent department is entitled to withhold and / or adjust the amount of gratuity and pension qua the amount of rent which requires to be recovered from the petitioner by the respondent on account of unauthorised occupancy of the quarter in question or not? It may be noted that this very question has been examined by the Apex Court in case of Gorakhpur University and Others v. Dr. Shitla Prasad Nagendra and Others reported in AIR 2001 SC 2433, wherein the observations

made by the Apex Court that "this Court has been repeatedly emphasizing the position that pension and gratuity are no longer matters of any bounty to be distributed by Government but are valuable rights acquired and property in their hands and any delay in settlement and disbursement whereof should be viewed seriously and dealt with severely by imposing penalty in the form of payment of interest. Withholding of quarters allotted, while in service, even after retirement without vacating the same has been viewed to be not a valid ground to withhold the disbursement of the terminal benefits. Such is the position with reference to amounts due towards provident fund, which is rendered immune from attachment and deduction or adjustment as against any other dues from the employee".

#. This Court has also bearing in mind the aforesaid decision, has considered the case of GUJARAT STATE ROAD TRANSPORT CORPORATION VS. KIRITKUMAR PONJALAL BAROT reported in 2003-III-LLJ pg.247. The relevant observations made by this Court in the aforesaid decision are referred as under :

"[4] I have considered the submissions made by the learned advocates for the parties. I have also considered the orders passed by the authorities below. I have also considered the decision reported in 2000 (Suppl) (1) JT SC page 515 which has been cited by Mr. Dagli before this Court. In the said decision, it has been observed that the amount of market rent can be recovered from the retirement benefits of the workman or employee. Said decision has been considered in subsequent decision by the apex court in case of Gorakhpur University and Others v. Dr. Shitla Prasad Nagendra and Others reported in AIR 2001 SC 2433. Relevant observations made by the Apex Court in para 5 of the said decision are reproduced as under:

"5. We have carefully considered the submissions on behalf of the respective parties before us. The earlier decision pertaining to this very University reported in 1996 (2) ESC 211 (All) (supra) is that of a Division Bench rendered after considering the principles laid down and also placing reliance upon the decisions of this Court reported in (1994) 6 SCC 589 (supra) which, in turn, relied upon earlier decisions in State of Kerala v. M. Padmanabhan Nair (1985) 1 SCC 429 : (AIR 1985 SC 356 : 1985

Lab IC 664) and AIR 1981 AC 212 (supra). This Court has been repeatedly emphasizing the position that pension and gratuity are no longer matters of any bounty to be distributed by Government but are valuable rights acquired and property in their hands and any delay in settlement and disbursement whereof should be viewed seriously and dealt with severely by imposing penalty in the form of payment of interest. Withholding of quarters allotted, while in service, even after retirement without vacating the same has been viewed to be not a valid ground to withhold the disbursement of the terminal benefits. Such is the position with reference to amounts due towards provident fund, which is rendered immune from attachment and deduction or adjustment as against any other dues from the employee. In the context of this, mere reliance on behalf of the appellant upon yet another decision of a different Division Bench of the very High Court rendered without taking note of any of the earlier decisions of this court but merely proceeding to decide the issue upon equitable considerations of balancing conflicting claims of respective parties before it does not improve the case of the appellant any further. Reliance placed for the appellant University on the decision reported in 2000 Suppl (1) JT (SC) 515 does not also sound well on the facts and circumstances of this case. It is not clear from the facts relating to the said decision as to whether the person concerned was allowed to remain in occupation on receipt of the normal rent as in the present case. As noticed earlier, the case of the contesting respondent in this case is that the University authorities regularly accepted the rent at normal rates every month from the petitioner till the quarters was vacated and that in spite of request made for the allotment of the said quarters in favour of the son of the respondent, who is in the service of the University, no decision seems to have been taken and communicated though it is now claimed in the Court proceedings that he is not entitled to this type of accommodation. Further, the facts disclosed such as the resolutions of the University resolving to waive penal rent from all Teaches as well as that of the Executive Council dated 18.7.1994 and the actual such waiver made in the case of several others cannot be easily ignored. The lethargy shown by the authorities

> in not taking any action according to law to enforce their right to recover possession of the quarters from the respondent or fix liability or determine the so called penal rent after giving prior show cause notice or any opportunity to him before ever even proceeding to recover the same from the respondent renders the claim for penal rent not only a seriously disputed or contested claim but the University cannot be allowed to recover summarily the alleged dues according to its whims in a vindictive manner by adopting different and discriminatory standards. The facts disclosed also show that it is almost one year after the vacation of the quarter and that too on the basis of certain subsequent orders increasing the rates of penal rent, the applicability of which to the respondent itself was again seriously disputed and to some extent justifiably too, the appellant cannot be held to be entitled to recover by way of adjustment such disputed sums or claims against the pension, gratuity and provident fund amounts indisputably due and unquestionably payable to the respondent before us. The claims of the University cannot be said to be e in respect of an admitted or conceded claim or sum due. Therefore, we are of the view that no infirmity or illegality could be said to be vitiated the order, under challenge in this appeal, to call for our interference, apart from the further reason that the disbursements have already been said to have been made in this case as per the decision of the High Court."

#. At this stage, it is also necessary to consider one of the important aspects that according to the petitioner, he was transferred to Jamnagar within short period in the year 1995 and thereafter he was again transferred in the year 1989 to Jamnagar to Baroda District, meaning thereby, a moment the petitioner was transferred from Madhuvan Colony area to Jamnagar in the year 1985, occupancy of the quarter in question becomes unauthorised. Despite of this fact, the petitioner had occupied the quarter but no steps were taken by the respondents for vacating the quarter while initiating the proceedings under the Public Premises Eviction Act. But when the petitioner was again transferred to Baroda District from Janmangar in the year 1989, the respondent Department had initiated proceedings in the matter. Therefore, it is clear that no immediate steps were taken

by the respondent and for the first time, notice under the Public Premises Eviction Act came to be issued on 15th October, 1998 and prior thereto, no steps were taken by the Department. It may also be appreciated that initially the rent was Rs.139/- per month. Thereafter, it was increased to Rs.1920/- as market rent with retrospective effect from January, 1991 to December, 1995. Learned advocate Mr.Majmudar has also contended and disputed the legal right of the respondent to recover the market rent from the petitioner with retrospective effect, meaning thereby, the increased rent for the quarter in question was and is not admitted by the petitioner. But so far this issue is concerned, this Court is not examining the legality and validity of the fixation of the market rent by the Department. But it is made clear that the dispute is raised by the petitioner in the petition that the market rent was fixed at Rs.1920/- with retrospective effect, which in my opinion, seems to be justified.

#. In such circumstances, when the claim of the respondent department is not admitted by the petitioner and against that, the amount of gratuity and pension has been withheld by the respondent, the action of the respondent in my view, is contrary to the law laid down by the Apex Court as well as this Court. Therefore, according to my opinion, the petitioner is entitled to the amount of Rs.1,86,909/- from the respondent State Authority towards his claim of gratuity and part pension amount due on his retirement.

##. Learned advocate Mr.Majmudar for the petitioner has lastly contended that the amount of question, has been withheld by the respondent department from the date of retirement of the petitioner i.e. 31st October, 1998 and for more than five years, the same has been utilised by the respondent Government and the petitioner is at a loss of the interest as the said amount has not been received by the petitioner in time. Therefore, he submitted that the amount which has been withheld by the respondent for a long time not less than five years and since the same has been utilised by the respondent Department and resultantly, the petitioner is made to suffer loss of interest, the request is, to award the same amount from the respondents to the petitioner with interest. However, this request is opposed by the learned AGP Mr.K.L.Pandya.

##. Having regards to the submissions of the learned advocates for the parties on this aspect,in my opinion,

once this Court has come to the conclusion that the amount towards the claim of the gratuity and part pension of the petitioner is illegally and unauthorisedly withheld by the respondent Department, the petitioner is entitled to the interest at the reasonable rate upon the said amount from the date of his retirement till the date of the amount is actually made in favour of the petitioner.

##. In view of above discussion, this petition succeeds and the same is allowed accordingly. The order and / or decision of the respondent department dated 21st January, 1999 withholding the amount of Rs.1,86,909/- of the petitioner against the claim of the gratuity and pension amount is held to be illegal and invalid and contrary to the principles laid down by the Supreme Court. Therefore, it is directed to the respondents State Authority to pay a sum of Rs.1,86,909/- to the petitioner with cumulative interest at the rate of 9 % per annum from date of his retirement i.e. 31st October, 1998 till the date of actual payment made in favour of the petitioner by the respondent, within three months from the date of receipt of copy of this order.

Rule is made absolute to the extent indicate above with no order as to costs.

Direct Service permitted.

Date : 18.9.2003 [H.K.Rathod, J.]

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